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Attorneys for Plaintiff
Haiqi CHEN

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

Haiqi CHEN

Plaintiff,

v.

United States Citizenship and Immigration Services
("USCIS"); Department of Homeland Security
("DHS"); Department of Justice ("DOJ"); Federal
Bureau of Investigation ("FBI")

Defendants

Case No. C 07-2462 SC

**JOINT CASE
MANAGEMENT
STATEMENT**

Immigration Case, Administrative
Procedure Act Case

Agency No.: A 97 346 394

1 The parties to the above-entitled action hereby submit this Joint Case Management
2 Statement and Proposed Order and request the Court to adopt it as the Case Management Order
3 in this case.

4 **DESCRIPTION OF THE CASE**

5 1. Jurisdiction and Service

6 Plaintiff asserts that this Court has jurisdiction over the present action pursuant to 28
7 U.S.C. § 1361, the mandamus statute; 28 U.S.C. § 2201, the Declaratory Judgment Act; 28
8 U.S.C. § 1331, general federal question jurisdiction; and 5 U.S.C. § 702, the Administrative
9 Procedure Act (“APA”). Venue is properly with this Court pursuant to 28 U.S.C. § 1391(e)
10 because this is a civil action in which the Defendants are agencies of the United States, and
11 because Plaintiff Haiqi Chen (“Chen”) resides in the Northern District of California, and there is
12 no real property involved in this action. No issues exist regarding personal jurisdiction or venue.
13 No parties remain to be served.

14 2. Facts

15 There are no factual issues in dispute. A brief summary of the relevant facts is as
16 follows: Chen is a national of China and a citizen of Canada. On July 3, 2003, Chen filed an
17 employment-based Adjustment of Status application with the USCIS California Service Center,
18 based on a previously approved Immigrant Petition for Alien Worker (Form I-140) by @Road,
19 classifying him as a member of the professions with an advanced degree. The I-140 Immigrant
20 Petition was approved by the USCIS California Service Center on June 16, 2003.

21 Chen has made approximately ten inquiries with the USCIS California Service Center
22 regarding the status of his adjustment of status application, which has now been pending for
23 over four years. He has only been informed that his background name check still remains
24 pending. Chen’s adjustment of status application has been pending for over four years.

1 3. Legal Issues

2 Defendants assert that the Court has no subject matter jurisdiction over this case.

3 Assuming the Court has jurisdiction, Defendants assert that the delay in adjudicating Chen's
4 application is reasonable. A brief summary of the relevant statutes, regulations, and caselaw is
5 as follows: Any employer desiring and intending to employ within the United States an alien
6 entitled to classification under inter alia, 8 U.S.C. § 1153(b)(2) may file a petition with the
7 Attorney General for such classification. See 8 C.F.R. § 1154(a)(1)(F). Thereafter, if it is
8 determined that the facts stated in the petition are true and that the alien on behalf of whom the
9 petition is filed is eligible for a visa under 8 U.S.C. § 1153(b), the Attorney General shall
10 approve the visa petition. See 8 U.S.C. § 1154(b). An alien who is eligible to receive, inter
11 alia, an employment-based immigrant visa under 8 U.S.C. § 1153(b) may adjust her or his
12 status from nonimmigrant to lawful permanent resident. 8 U.S.C. § 1255(k).
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14 Chen is eligible for adjustment of status as he has an already approved employment-
15 based visa petition, pursuant to 8 U.S.C. § 1255(k). Chen filed an adjustment of status
16 application with the USCIS California Service Center on July 3, 2003. Over four years later, it
17 has still not yet been adjudicated. The USCIS is currently processing adjustment of status
18 applications that were submitted on or before August 10, 2006.
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20 Mandamus is an appropriate remedy whenever a party demonstrates a clear right to have
21 an action performed by a governmental official who refuses to act. See Donovan v. United
22 States, 580 F.2d 1203, 1208 (3d Cir. 1978). Plaintiff asserts that Defendants have a duty to act
23 and have failed to do so in a reasonable time or manner. See, e.g., Patel v. Reno, 134 F.3d 929
24 (9th Cir. 1997). Plaintiff asserts that Defendants have thus violated the Immigration and
25 Nationality Act and that Defendants have also violated the Administrative Procedures Act,
26 which provides that a reviewing court shall compel agency action unlawfully withheld or
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1 unreasonably delayed. 5 U.S.C. § 706(1). Plaintiff further asserts that he has exhausted all
2 other available remedies and has “no other adequate means to attain the relief he desires.”
3 Allied Chemical Corp. v. Daiflon, Inc., 449 U.S. 33, 35 (1980). Plaintiff thus asserts that his
4 right to issuance of the writ is therefore “clear and indisputable.” Id.

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6 4. Motions

7 There are no prior or pending motions in this case. The parties anticipate that at least one
8 Motion for Summary Judgment will be filed.

9 5. Amendment of Pleadings

10 At this time, the parties do not expect to amend the pleadings.

11 6. Evidence Preservation

12 It does not appear that any steps are necessary to preserve evidence at this time.

13 7. Disclosures

14 Defendants assert that they have no documents subject to the local rules relating to
15 disclosure.

16 8. Discovery

17 No discovery has been taken to date. The parties anticipate that discovery will likely
18 include, but is not limited to, interrogatories, requests for admission, and deposition in
19 conformance with the discovery rules. The parties have agreed to a 60-day discovery cut-off
20 date, such that all discovery will be completed by October 30, 2007.

21 9. Class Actions

22 This case is not a class action.

23 10. Related Cases

24 The parties know of know related cases or proceedings pending before another judge of
25 this court, or before another court or administrative body.
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11. Relief

Chen requests that the Court order USCIS to adjudicate his Adjustment of Status Application (Form I-485), and award reasonable costs and attorneys' fees. Chen further requests that the Court grant such further relief as the Court deems just and proper.

12. Settlement and ADR

On July 25, 2007, the parties filed a joint request to be exempt from the formal alternative dispute resolution process, as both parties agree that ADR would not be helpful in this case.

13. Consent to Magistrate Judge For All Purposes

This case was originally assigned to Magistrate Judge Edward M. Chen. On July 9, 2007, Defendants filed a Declination to Proceed Before a Magistrate Judge and Request for Reassignment to a United States District Judge. On July 10, 2007, this case was reassigned to the Honorable Samuel Conti.

14. Other References

This case is not suitable for reference to binding arbitration, a special master, or the Judicial Panel on Multidistrict Litigation.

15. Narrowing of Issues

The parties believe that this case can be resolved by summary judgment.

16. Expedited Schedule

The parties believe that this case can be resolved by summary judgment.

17. Scheduling

The parties have agreed to a 60-day discovery cut-off date, such that all discovery will be completed by October 30, 2007.

The parties have further agreed that this action may be properly disposed of by summary judgment and, therefore, do not request a trial date. The parties propose the following schedule for the motions for summary judgment:

Parties' Cross Motions for Summary Judgment due: October 12, 2007

Parties' Oppositions due: October 26, 2007

Parties' Replies due: November 2, 2007

Hearing on Cross Motions for Summary Judgment: November 16, 2007

18. Trial

If this case does proceed to trial, the case will be tried to the court. The expected length of trial is one day.

19. Disclosure of Non-Party Interested Entities or Persons

None.

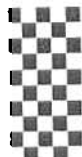
20. There are no additional matters as may facilitate the just, speedy and inexpensive disposition of this matter.


DATED: August 31, 2007

Respectfully submitted,

/s/
STACEY L. GARTLAND¹
Van Der Hout, Brigagliano & Nightingale, LLP
Attorneys for Petitioners

¹I, Stacey L. Gartland, attest that both Edward A. Olsen and I have agreed to this joint case management statement.




EDWARD A. OLSEN
Assistant United States Attorney
Attorneys for Respondents

CASE MANAGEMENT ORDER

The Case Management Statement and Proposed Order are hereby adopted as the Case Management Order for the Case and the parties are hereby ordered to comply with this Order.

DATED: 
Samuel Conti
United States Judge

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